

9TH CIRCUIT RULES: FINANCE MANAGERS CAN QUALIFY FOR AN EXEMPTION FROM OVERTIME

Insights

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On May 18, 2005, the U.S. Court of Appeals for the 9th Circuit (having jurisdiction over nine western states) reversed the decisions of three lower courts and ruled that Finance Managers at dealerships can qualify for an exemption from overtime as “commission-paid” employees.

Three federal district courts in Oregon and Washington had ruled that Finance Managers did not qualify for the federal “commission- paid” exemption because they were selling financing and insurance which was not considered to be “retail” in nature. As a result, the Finance Managers who worked more than 40 hours in a week were entitled to be paid an overtime premium on all of their compensation (both salary and commission) that exceeded 40 hours.

Shortly after the district court decisions were issued, the U.S. Department of Labor (DOL) published a lengthy Opinion Letter setting forth its interpretation of the “commission-paid” exemption as it applies to Finance Managers. In that letter, the DOL explained that Finance Managers are exempt from overtime as “commission-paid” employees if they meet the following three criteria:

1. They are employed by a “retail” dealership,
2. They receive the majority of their compensation in the form of commissions, and
3. They receive at least one and one-half times the minimum wage for all hours worked in an overtime week.

The DOL went on to explain that the reference to “retail” in the exemption applied *only* to the dealership’s overall business and not to an employee’s specific duties.

The dealers in each case asked the district courts to reconsider their decisions in light of the DOL Opinion Letter, but all three judges declined. The cases were then appealed to the 9th Circuit.

In its ruling, the 9th Circuit agreed with the DOL's position that the duties of an employee are irrelevant and that the exemption from overtime is available if the employee meets the three criteria. Therefore, it found that these commission-paid Finance Managers were all exempt from overtime.

Although this decision is certainly good news, dealers should remember that these cases dealt only with the applicability of the *federal* overtime exemption. Employers must comply with *both* state and federal wage laws. A number of States' wage laws do not recognize this exemption at all, while others contain an exemption which is more stringent than the federal law. Therefore, dealers need to check their State wage laws to determine if they recognize the federal exemption or contain a similar exemption. If they do not, your Finance Managers may still be entitled to overtime premium.

Should you have any questions about the Court's opinion or the exempt status of your dealership's Finance Managers, please contact any Fisher Phillips office and ask for a member of the Dealership Practice Group.

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